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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,141	07/30/2003	John J. Giobbi	47079-0107D2	9474

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EXAMINER	
YOO, JASSON H	

ART UNIT	PAPER NUMBER
3714	

DATE MAILED: 01/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/630,141	GIOBBI, JOHN J.	
	Examiner	Art Unit	
	Jasson Yoo	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 June 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *75-83* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *75-83* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 75-83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raven et al., U.S. 5,429,361 (Jul. 4, 1995) in view of Sizer.

Claims 75 and 83; Raven discloses a player tracking system for a gaming machine wherein data carried on a player's portable data unit is used to access monetary information from the player's monetary account stored at a central host computer, the player's account is associated with the personal identifier; monetary information is transmitted from the central host computer to gaming machine and a game is played on the machine using the transmitted information. *See, e.g., fig. 1-3; col. 1:38-2:3, 10:37-11:62.* When the player is not interacting with the machine, the player tracking system enters an "attract mode" wherein promotional messages are displayed. *See col. 5:15-29.* Upon detection of a player's portable data unit, the device displays personalized information. *See fig. 2.* Raven also discloses modifying the game account which includes placing a wager on a game playable on the gaming machine (col. 2:16-19, 4:17-25, 10:47-

11:14). With regard to the claim, Raven discloses all the limitations except detecting the presence of a passerby proximate to the gaming machine, the passerby not playing the gaming machine, and modifying the operation of the gaming machine in response to detecting the presence of the passerby. As discussed below, this feature would have been obvious to an gaming artisan in view of Sizer.

Sizer discloses an audiovisual marketing machine capable of detecting a portable data unit carried by a person allowing the device to automatically interact with the person within proximity of the machine using personalized information contained on the data unit. *See col. 6:4-17; 16:14-32.* For example, at a trade show or exhibition a person may be given an RF card containing information on the person. *See id.* When that passerby approaches a device, the device detects the portable data unit and delivers information to the passerby which is personalized according to the identity information contained on the portable data unit . *See id.*

Sizer's system is directed at the attracting a passerby to interact with point-of-sale devices and storing information tracking their interaction. A casino is merely a specialized type of commercial establishment where the point of sale devices are gaming machines. In view of Sizer, it would have been obvious to one of ordinary skill in the art of gaming devices to modify the player tracking system disclosed by Raven, wherein the machine displays an attract mode to

players until it detects a player's portable data unit and then displays personalized information, to add the feature of detecting the presence of a passerby proximate to the gaming machine, the passerby not playing the gaming machine and modifying the operation of the gaming machine in response to detecting the presence of the passerby. As suggested by Sizer, the modification would increase use of the game devices by initiating personalized attraction displays when a passersby is within proximity of the gaming device; and at the same time, collecting statistical information on the interaction to increase the effectiveness of future displays. *See col. 8:6-49, 15:66-16:32, 22:10-36.*

Claim 76; Sizer disclose establishing a wireless transmission link between a first wireless transceiver on the machine and a second wireless transceiver on the passerby. *See col. 6:4-17; 16:14-32.*

Claims 77 and 81; Sizer discloses a portable data unit allowing the identity of the passerby to be determined. *See id.*

Claims 78; Raven et al. discloses the method of claim 75 comprising receiving a wager from the passerby. (the system provides features including game accounting; col. 2:16-19, 4:17-25, 10:47-11:14).

Claims 79 and 82; Sizer discloses inviting the passerby to interact with the machine. Thus, the system suggested by the combination of Raven with Sizer,

wherein the machine offers a game suggests inviting the passerby to play the machine.

Claim 80; Raven discloses operating in an attract mode prior to detecting the presence of a player. *See col. 5:15-29.*

Response to Arguments

Applicant's arguments filed 6/8/2005 have been fully considered but they are not persuasive.

Regarding claims 25-82, applicant argues the combination of Raven in view of Sizer lack motivation, suggestion, or incentive to combine the references, and thus it is not obvious to combine the two references. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Raven discloses a player tracking system for a gaming machine wherein data carried on a player's portable data unit is used to access monetary information from the player's monetary account stored at a central host computer, the player's account is associated with the personal identifier. Raven discloses

all the limitations except detecting the presence of a passerby proximate to the gaming machine, the passerby not playing the gaming machine, and modifying the operation of the gaming machine in response to detecting the presence of the passerby. Sizer discloses an audiovisual marketing machine capable of detecting a portable data unit carried by a person allowing the device to automatically interact with the person within proximity of the machine using personalized information contained on the data unit. *See col. 6:4-17; 16:14-32.* In view of Sizer, it would have been obvious to one of ordinary skill in the art of gaming devices to modify the player tracking system disclosed by Raven, wherein the machine displays an attract mode to players until it detects a player's portable data unit and then displays personalized information, to add the feature of detecting the presence of a passerby proximate to the gaming machine, the passerby not playing the gaming machine and modifying the operation of the gaming machine in response to detecting the presence of the passerby. As suggested by Sizer, the modification would increase use of the game devices by initiating personalized attraction displays when a passersby is within proximity of the gaming device; and at the same time, collecting statistical information on the interaction to increase the effectiveness of future displays. *See col. 8:6-49, 15:66-16:32, 22:10-36.*

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only

knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jasson Yoo whose telephone number is (571)272-5563. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Jones can be reached on (571)272-4438. The fax

phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JHY